Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Venzon Telephone Companies	)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16,	)	
Transmittal No. 226	)	

MOTION OF MPOWER COMMUNICATIONS CORP. TO ACCEPT OPPOSITION AS TIMELY FILED

Mpower Communications Corp. ("Mpower")hereby submits its M ti to Accept Opposition as Timely Filed ("Motion"). Mpower customarily makes its Federal Communications Commission ("FCC" or "Commission") filings electronically. It intended to file its Opposition in this case electronically, however, the Electronic Comment Filing System is down and has been down for several hours. **An** "Alert" is posted on the Commission's home page. Nevertheless, Mpower attempted to file electronically or by e-mail, without success. Mpower then called the Office of the Secretary and was instructed to tile paper copies by overnight service, along with a motion to accept the filing as timely. Mpower respectfully requests that the Commission accept Mpower's Opposition in this docket as timely filed

MPOWER COMMUNICATIONS CORP

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Before the
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In the Matter of

The Verizon Telephone Companies	)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16,	)	
Transmittal No. 226	)	

OPPOSITION OF
MPOWER COMMUNICATIONS CORP.
TO VERIZON DIRECT CASE

Mpower Communications Corp. ("Mpower") hereby submits its Opposition to Verizon Telephone Companies' ("Verizon's") Direct Case and its Comments on the issues raised by the Federal Communications Commission ("Commission" or "FCC") on the Verizon tariffs which were filed to become effective August 9, 2002.

I. Introduction

Verizon continually compares itself lo competitive companies and at one point argues that Verizon needs the "protections" it requests more than competitive companies because it cannot turn anyone away.[1] The "problem" Verizon complains about, however, merely reflects the fact that in the wholesale environment, Verizon has a monopoly on "bottleneck" equipment, such as loops, without which its competitors cannot operate. Because Verizon and other incumbent local exchange carriers ("ILECs") do not operate in a competitive wholesale environment. they cannot be allowed to "protect" themselves

[1] Verizon Direct Case, p. 2

at will, when their actions have a direct and potentially anti-competitive impact on their competitors.

II. Basis For Requiring a Deposit

Verizon proposes to increase the number of circumstances in which it may demand that its competitors pay a deposit. Verizon already has the ability to demand deposits from companies that do not timely pay their bills. Verizon proposes to add provisions that would allow Verizon to require deposits from companies that have continued to pay their bills in a timely manner but whose stock ratings have been downgraded as well as to require deposits from companies about to tile bankruptcy.

Veriron cites WorldCom's Opposition, in which WorldCom indicated that "public data shows that ***one** in ten* issuers of securities that currently are below investment grade will default on the securities."[2] Verizon asserts that the default rate is "much higher" in the telecommunications industry, citing statistics as to the "volume" of recent defaults and the percentage of recently defaulting issuers of securities that have been telecommunications firms.' These figures, however, are not directly comparable to the figures cited by WorldCom. WorldCom was citing the percentage of the issuers of below investment grade securities that default over time. Verizon is citing to figures for the percentage of defaulting firms that are telecommunications companies and the percent of recently defaulting issuers that are telecommunications companies.

If WorldCom's figures are indicative **of** the default rate for speculative grade securities issuers, <u>only 10% **of** the companies from which Verizon would now be able to demand deposits</u> would be likely to default. Even if a higher percentage of

- Verizon Direct Case, p. 11; emphasis in original
' *Id.*

telecommunications companies has recently defaulted – Verizon suggests it is 37%[4] -- it is clear that the vast majority of the competitive companies from whom Verizon could demand deposits under its proposed tariff would be unlikely to default. This is not a fair and non-discriminatory policy.

Although Verizon has redacted almost all of the supporting documentation for its positions, Verizon argues that it finds that "there was a correlation between below investment grade S&P credit ratings and the percent of billable revenues outstanding 90 days or more for these customers."[5] Verizon does not say how many "selected carrier customers" it looked at, how it "selected" them, what degree of correlation it found, nor whether the "correlation" was significant given its methods. Even if a "correlation" exists, however, between a below-investment-grade rating on a company's securities and a greater likelihood of paying bills late, Verizon's proposal would unjustly allow it to demand deposits from a large percentage of companies who do not pay late and are not likely to default. This would be unjustly discriminatory.

Verizon already has the ability to impose financial penalties on companies that pay late. Even for those companies that actually pay "late," there is no allegation that they will necessarily default on their obligations. Further, there also can be good reasons for paying "late." ILEC bills are extremely lengthy and frequently inaccurate. Some ILEC bills take more than 80 hours a month to audit. Verizon's bills are so inaccurate that it is impossible to audit them effectively. In fact, Verizon has recognized the inadequacy of its CLEC bills. As a result, Verizon has agreed that Mpower will report how many lines it is leasing and will pay from a formula, instead of from Verizon's

[4] *Id.*
[5] *Id.*

inaccurate and unauditable bills. Such a record does not give one great comfort with allegations based upon Verizon's record-keeping in regard to its wholesale customers.

Verizon has the ability to obtain security deposits from customers who do not pay in a timely fashion. Now, it would like the ability to require security deposits or advance payments from competitors whose securities ratings have fallen. When even the ILECs' securities have been downgraded, *it* is not clear what CLECs could pass this test. Thus, any CLECs that have not already paid a deposit could be required to do so.

As to bankruptcy proceedings triggering <u>mandatory deposits</u>, such provisions seem very likely to conflict with bankruptcy law. Even competitive companies cannot discriminate against a customer that enters into a bankruptcy proceeding. Because a utility – including CLECs -- cannot terminate a contract with a debtor for filing bankruptcy, bankruptcy laws provide the means for utilities to obtain assurance of payment. An assurance of payment would take the form of a deposit, however, this would have to be allowed by the Bankruptcy Court, not imposed unilaterally by the utility before the bankruptcy was even filed.

Verizon's requests show a desire to continue to act like the monopoly provider it has long been in retail telecommunications services. It wants to be <u>completely</u> protected not only from known credit risks but from <u>all possible</u> credit risks. This is not the way competition works. Verizon is already better protected than most of its wholesale customers, who frequently are not in a sufficiently strong competitive position to demand large deposits from their customers. Verizon should not be allowed to implement the proposed system for triggering deposit obligations based solely upon the rating of the company's securities.

III. Risk of Non-Collection

Verizon alleges that its uncollectibles have increased by more than 300-400% over the last decade.[6] In this case, Verizon at least provides some basic summary data.' What that data shows, however, is that Verizon's uncollectibles in the East varied between $14+ million to over $41 million during the period 1990-2000, with the $14 million falling in 1991 and the $41+ million falling in 1994. With the spike in bankruptcy filings by telecommunications carriers in 2001, Verizon shows a jump in uncollectibles between 2000 and 2001 from $37+ million to $1 10 million.

Although it is November of 2002, Verizon shows no figures for 2002. Other evidence, however, indicates that at least the number of defaulting carriers is down dramatically, although the total dollar amount could continue to be large if WorldCom debts are included. The fact is that most telecommunications carriers that have been forced to seek bankruptcy protection have already done so. If one excludes the dramatic and unique cases of WorldCom and Global Crossing, BellSouth data[8] shows exactly the same number of carriers defaulting in 2000 and 2002 and again excluding the largest cases of corporate fraud in history, lower dollar amounts of default in 2002 than in 2000. The telecom "shake out" has largely occurred. Mergers and acquisitions will no doubt increase to further consolidate the remaining "players," however, the wave of bankruptcies has certainly passed.

In fact, a recent article headlined "ALTS: Publicly held CLECs have turned corner," **reports** that:

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[6] Verizon Direct Case, p. ***A-9.***
[7] Verizon Direct Case, **Ex. A-I**
[8] BellSouth Direct **Case,** 10/10/02, WC 02-304, **Ex.** 2, pp. 2-4.

> The 19 publicly held competitive local exchange carriers (CLECs) collectively will produce an EBITDA (earnings before interest, taxes, depreciation and amortization) profit in 2002, barring unforeseen developments, according to a study released today by The Association for Local Telecommunications Services.
>
> If that happens, it would mark the first time CLECs have turned a profit since the passage of the Telecom Act in 1996.
>
> 'This is a very significant development,' said ALTS President John Windhausen. 'The reported death of competitive carriers is woefully premature. CLECs are turning the corner.'[9]

This analysis supports the view that the telecommunications industry has behaved much as many other new industries have, with an initial rush of capitalization, a "shake out" and subsequently, stabilization and consolidation. There is no good reason to allow Verizon vastly increased powers to require deposits from its competitors who are paying in a timely fashion.

IV. Reduced Notice of Terminations

"Verizon's commitment is to send non-electronic bills to the customer within 10 business days from the bill date."[10] (Emphasis added.) Ten business days is two weeks! The customer is now required to pay within 30 days of the bill date. Given the time necessary to obtain and mail a check plus the time required for mailing, delivery and processing by Verizon, a carrier customer currently has less than one week to review the bill before it must obtain and mail a check.

Vcrizon also argues that if *it* had a short period for notices of termination, i.e. 7 days instead of 30 days, it would be able to wait longer to send out a notice of termination, presumably allowing a "cure" to take place without the need to threaten the imminent termination of services. Verizon claims, however that "in fact. Verizon has

[9] TelcphoneOnline.com, ***ALTS.*** *Publicly held CLECs have turned* ***corner,*** 10/17/02
[10] Verizon Direct Case, p. B-1

issued a termination of services carrier [sic] to only one carrier in the past year."[11] It is not clear to Mpower what great risk Verizon believes it must protect against if, in fact, it only issued one notice oftermination last year.

Mpower also assumes that because it was withdrawn when the error was realized, Verizon was not counting the notice of termination Verizon sent to Mpower because it was paying according to the aweed upon forumla and not according to the inaccurate and unauditable hills Verizon sends.[12] If such actions represent the accuracy and efficiency of Verizon's 30-day wholesale billing and collection process, Mpower certainly would not like to see the accuracy and efficiency of a dramatically shortened process for notices of termination.

If Verizon cannot guarantee its hills will even be sent to the customer in less than 10 business days, it is not clear how Verizon believes its competitors can pay within 7 days. Verizon did not respond to the Commission's questions, however, regarding how CLECs could be expected to review and assess the demand for a deposit or advance payment, dispute the requirement and raise the necessary funds within the proposed time period. Verizon merely argues that there can be a short time between the time a carrier's "precarious financial condition becomes evident and the time in which it stops paying hills."[13] It then points out that WorldCom's "financial difficulties first came to light in December of 2001"[14] and that it tiled for bankruptcy in July 2002, within a few weeks of "[s]erious rumors that it would potentially be filing for bankruptcy."[15] Verizon does not

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11 Verizon Direct Case, p. B-2.
12 See Mpower *ex parte*, dated 10/18/02, filed in Verizon Declaratory Action, WC 02-202.
13 Verizon Direct Case, **p.** B-5.
14 *Id.*
15 *Id.*

allege that WorldCom ever stopped paying its bills so it is not clear how Verizon would propose to have protected itself with its proposed new authority. It appears that Verizon desired to be able to use its proposed 7-day notice ofrequired deposit to get WorldCom to pay in the approximately three weeks cited between the "serious rumors" of bankruptcy and the actual filing. If so, this looks more like an attempt to extort a preferential payment which might then be set aside by the Bankruptcy Court than any commercially acceptable means of protecting oneself from non-payment.

V. Refund of Deposits

Verizon argues that it should not have to return deposits automatically upon a carrier's paying timely for 12 months because the conditions that triggered the "need for a security deposit" such as a depressed securities rating, bankruptcy, etc. may still exist.[16] If Verizon continues to be paid, they should not be able to demand or keep security deposits from its competitors. As noted above, Verizon's whole application seems to reject the notion that regular payment of bills by its competitors is sufficient. Instead, Verizon seems determined to protect itself from any possible default on the part of its customers whether through bankruptcy or from the possibly weakened financial structure reflected in reduced securities ratings, whether the competitor continues to pay or not. Such use of monopoly wholesale power is unfair and discriminatory and should not be allowed.

VI. Conclusions

Thus, Vcrizon should not be allowed to implement its proposed tariff criteria for establishing customer deposits, advance payments and notices of termination. It is not

[16] Verizon Direct Case, p. C-1.

clear that Verizon needs additional "protection" now that the "shake out" in the telecommunications industry seems to have passed its peak. Even more significant, however, it would allow for an arbitrary transfer of scarce resources from struggling CLECs to their bigger "bottleneck" wholesale services provider, a result which would be damaging to CLECs, as well as anti-competitive

Respectfully submitted,

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